

PT 02-15

Tax Type: Property Tax
Issue: Religious Ownership/Use
Grounds for Burying the Dead

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

ST. JOSEPH CEMETERY ASSOCIATION)	A.H. Docket #	00-PT-0059
OF ALTON	)	Docket #s	99-60-213
Applicant	)		99-60-214
	)		99-60-215
v.	)	PINs	23-2-07-01-17-302-003
	)		23-2-07-01-17-302-005
	)		23-2-07-01-18-301-033
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Brad Huff, Graham and Graham, Ltd., appeared in behalf of St. Joseph Cemetery Association of Alton; Mr. Kent Steinkamp, Special Assistant Attorney General appeared in behalf of the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held on September 12, 2001, to determine whether or not Madison County Parcel Index Nos. (hereinafter referred as "PIN[s]") 23-2-07-01-17-302-003, 23-2-07-01-17-302-005, and 23-2-07-01-18-301-033 qualified for exemption during the 1999 assessment year.

Mr. Don Joehl, Business Manager for St. Mary's Parish of Alton, Illinois and Mr. Tom Reiser, Assistant Association Director for Finances, Property, and Cemeteries for the Catholic Diocese of Springfield were present and testified on behalf of the St. Joseph Cemetery Association of Alton (hereinafter referred to as the "Applicant").

The issues in this matter include, first, whether the applicant was the owner of the parcels during the 1999 assessment year and secondly, whether the applicant used these parcels for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Madison County PINs 23-2-07-01-17-302-003, 23-2-07-01-17-302-005, and 23-2-07-01-18-301-033 did not qualify for property tax exemptions for the 1999 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 11)

2. On March 9, 2000, the Department received the request for exemption of Madison County PIN 23-2-07-01-17-302-003. On July 13, 2000, the Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. On August 3, 2000, the applicant timely protested the denial and requested a hearing. The hearing on September 12, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

3. On March 9, 2000, the Department received the request for exemptions of Madison County PINs 23-2-07-01-17-302-005 and 23-2-07-01-18-301-033. On July 13, 2000, the Department denied the requested exemptions finding that the properties were not in exempt use. On August 3, 2000, the applicant timely protested the denials and requested a hearing. The hearing on September 12, 2001 was held pursuant to that request. (Dept. Ex. No. 1)

4. Applicant acquired PIN 23-2-07-01-17-302-005 by a quitclaim deed dated January 16, 1998. The applicant acquired PINs 23-2-07-01-17-302-003 and 23-2-07-01-18-301-033 by a quitclaim deed dated April 1, 1999. (Dept. Ex. No. 1)

5. St. Mary's Parish operates the applicant and works with the cemetery director. The Catholic Diocese of Springfield has the responsibility for oversight of the 98 cemeteries in

the Diocese including the parcels at issue. (Tr. pp. 18, 50)

6. The applicant has a current existing cemetery that lies immediately south and west of the acquired land. The current cemetery area is fenced along its northern and western sides. The applicant has had problems with vandals coming into the cemetery and toppling tombstones. (Plaintiff's Ex. No. 14; Tr. pp. 23, 25, 37, 44)

7. The applicant acquired the subject parcels for future planning, to control the nuisance caused by the prior ownership, and to control the boundaries of the existing cemetery. (Tr. p. 47)

8. PIN 23-2-07-01-17-302- 003 is a one acre irregular parcel. PIN 23-2-07-01-18-301-033 is a 3.1 acre rectangle. PIN 23-2-07-01-17-302-005 is a rectangle that measures 42' by 120'. (Dept. Ex. No. 1; Plaintiff's Ex. No. 14)

9. In 1999 the applicant was clearing brush and tree stumps from the property on PIN 23-2-07-01-17-302-005. The property was covered with brush and chest-high weeds. It would have been possible to put burial sites on the property after the cleaning; however, the property is intended to offer a second entrance into applicant's cemetery. The property is not intended to be used as an actual burial site. (Applicant's Ex. Nos. 7, 8, 12, 14; Tr. pp. 31-33)

10. There was no road on PIN 23-2-07-01-17-302-005 in 1999. At the time of the hearing there was no road on the property. The property had been a residential lot with a short driveway. Due to financial considerations the new entrance to the cemetery was not constructed in 1999 and no plans were drawn up for the project. (Applicant's Ex. Nos. 7, 8, 12, 14; Tr. pp. 31-34, 38)

11. The applicant's purposes for acquiring PINs 23-2-07-01-18-301-033 and 23-2-07-01-17-302-003 are for expansion of applicant's current cemetery. There is no plot or plan depicting the development of the two parcels. Applicant uses donated or free services to remove the junk and debris and anticipates it will take at least one and a half to two more years to clear the property. The applicant does not have an immediate need to expand its cemetery. The applicant does not have all of the plotted lots sold in its existing cemetery. (Tr. pp. 36-37, 39-42,

45)

12. PIN 23-2-07-01-17-302-003 was heavily wooded at the time of purchase. In 1999 the applicant removed small sheds, junk, and tore down trees to open the property up. (Applicant's Ex. Nos. 4-6, 9-14; Tr. p. 35)

13. The applicant did not start clearing PIN 23-2-07-01-18-301-033 in 1999 other than a small corner in an attempt to gain entry into the property. Old tires, appliances, and junk are on the property. It is also heavily wooded. It would not have been possible to bury someone on PIN 23-2-07-01-18-301-033 in 1999. (Applicant's Ex. Nos. 6, 11; Tr. p. 36)

14. Continuing care, the preservation, and ornamentation of a place of internment is significant to the operation of a cemetery. The applicant employs professionals for planning its cemeteries. (Tr. p. 57)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the Constitutional authority, the General Assembly enacted 35 ILCS 200/15-45, the burial purposes exemption. That section of the statutes states, "All property used exclusively as graveyards or grounds for burying the dead is exempt."

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel.

Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Both the applicant and Department cite to adaptation cases in support of their assertions that property can be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st. Dist. 1977); and Weslin Properties Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). That proposition is correct as stated in the above cases.

However, the subject properties were vacant during 1999. The evidence is undisputed that no burials took place on the subject properties in 1999. The applicant employs professionals to plan its cemeteries and no evidence was offered that a professional was contacted regarding the platting, continuing care, ornamentation, or preservation of the properties. As the Department's representative noted, the applicant did not even have a drawing of where the planned roads were going to be on the subject properties. The only area cleared sufficiently so that burials could have taken place there in 1999 was the area designated for applicant's new road entrance into the cemetery. I therefore find that adaptation cases are not relevant to this applicant's use of the subject properties in 1999.

In Rosehill Cemetery v. Kern, 147 Ill. 483 (1893) the Supreme Court held that land owned by a cemetery and platted for future use for burial purposes but presently used only for raising sod and flowers for use in the cemetery did not qualify for exemption. In Spring Hill Cemetery v. Ryan, 20 Ill.2d 608, (1960) the court stated that burial purposes extend to something more than the act of internment, but found that tract one of the land which was used as a manager's residence did not qualify for exemption. The analysis for tract two in that case is insightful regarding the facts I have before me. The court found that tract two had not even been

platted for burial lots. Although the applicant argued that it received benefits from the free advertising done by the radio and television station located on that property, the court held that the primary use of the property was as a radio and television station, neither of which related to burial purposes. During the 1999 assessment year this applicant did not use the property. The only activity on this property was clearing away debris. That is not considered a use under Illinois law.

The Illinois Appellate Court found that a church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). I find that the primary use of the subject parcels was as vacant land in 1999 and the only activity performed on the properties by the applicant was its attempt to begin to clear them in 1999. As such, it does not qualify for exemption under 35 ILCS 200/15-45.

Based upon the foregoing, it is recommended that Madison County Parcel Index Nos. 23-2-07-01-17-302-003, 23-2-07-01-17-302-005, and 23-2-07-01-18-301-033 remain on the tax rolls for 1999 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
March 15, 2002